IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 36 OF 2002

1. Bostiao @ Seby Rodrigues,

2. Monty Rodrigues,

3. Rosario Rodrigues,

all r/o H. No. 124,
Socailowado, Terekhol,
Pernem, Goa. ... Appellants.

versus

S T A T E
through the Public Prosecutor. ... Respondent.

Mr. Shekhar Ingawale with Mr. Mandar Shirodkar, Advocates for the Appellants.

Mr. S. N. Sardessai, Public Prosecutor for the State/ Respondent.

CORAM: A. M. KHANWILKAR &
P. V. HARDAS, JJ.

DATED: 18TH NOVEMBER, 2003.

ORAL JUDGMENT(PER P.V.HARDAS, J.)

This Appeal, at the instance of the Appellants/Original Accused Nos.1 to 3, assails the conviction of the Appellants/Original Accused for offences punishable under Sections 302, 325 and 452 of

the Indian Penal Code and sentence of imprisonment for life and fine of Rs.3000/-, with default stipulation of Rigorous Imprisonment for 6 months, fine of Rs.1000/-, with default stipulation of Rigorous Imprisonment for 3 months, and Rigorous Imprisonment for 3 years and fine of Rs.1000/-, with default stipulation of Rigorous Imprisonment for 3 months, respectively, passed by the learned Sessions Judge, North Goa, Panaji, in Sessions Case No.3 of 2001, by Judgment rendered on 29th April, 2002.

2. The facts in brief as are germane for the decision of this Appeal are set out hereunder:-

P.W.10, P.S.I. Uday Parab, who at the relevant time was attached to the Pernem Police Station, received a telephone call on 10th September, 2000, at 11.15 p.m. from one Diogo Rodrigues, a Member of the Village Panchayat informing P.W.10, P.S.I. Uday Parab, that one person by name Jose Rodrigues, resident of Sokoilo vaddo, Terekhol and originally a resident of Bombay who was then staying at Terekhol had been seriously injured and was lying in a pool of blood near a house of one Santan Rodrigues at Terekhol. P.W.10, P.S.I. Uday Parab, recorded this information in the station diary and proceeded to the scene of offence along with staff members in a Police jeep. He reached the scene of

offence around midnight and found the said Diogo Rodrigues present and waiting near the chapel. The said Diogo Rodrigues accompanied P.W.10, P.S.I. Uday Parab, from the chapel to the scene of offence. At the scene of offence, P.W.10, P.S.I. Uday Parab, found that the seriously injured person Jose Rodrigues was already dead and it was not possible to shift the dead body during the late hours of the night. Guards were, therefore, placed at the scene of offence where the dead body of the deceased was lying. He could not draw the panchanama of the scene of offence immediately on account of poor visibility and also on account of non-availability of the panch witness. Therefore, on the next day, i.e. on 11th September, 2000, the scene of offence panchanama was drawn in the presence of P.W.1, Carridade Bosteao Dias and Diogo Rodrigues. The scene of offence panchanama is at Exh.9. The sketch is at Exh.10. From the scene of offence, blood samples were taken and sealed separately. A wooden stick(danda) also came to be attached under the said panchanama. Thereafter, the Inquest Panchanama of the deceased at Exh.11 in the presence of P.W.1, Carridade Bosteao Dias and Diogo Rodrigues also came to be drawn. An injured, P.W.7, Michael A. Rodrigues, was taken to the Goa Medical College for treatment. The report of the incident was lodged by P.W.2, Pratibha Rodrigues, at Exh.16. On the basis of the said report, an offence was registered vide Crime No.87/2000 under

Sections 452, 307, 302 r/w 34 of the Indian Penal Code. The Appellants/Original Accused came to be arrested in the presence of P.W.1, Carridade Bosteao Dias and Diogo Rodrigues and their Arrest Panchanamas are at Exhs. 12, 13 and 14 respectively.

3. The dead body of deceased Jose Rodrigues, was sent for post mortem examination and the post mortem examination was conducted by P.W.6, Dr. E. J. Rodrigues, on 12th September, 2000, though the dead body was received at the mortuary on 11th September, 2000, at 3.30 p.m. as the Inquest Panchanama was received on 12th September, 2000, at 1.30 p.m. P.W.6, Dr. E. J. Rodrigues, noticed the following external injuries:-

1. Horizontal lacerated wound 6 x 1.5 cms. at external occipital protuberance region of skull with underlines occipital skull bones fractured;

2. Horizontal lacerated wound of 7 x 1 cm, 1.5 cm. above injury no.1, skull bone deep;

3. Laceration of 1 x 0.5 cms with surrounding abrasion with 6 x 6 cms over right side of forehead fresh;

4. Black eye 6 x 6 cms around right eye;

5. Black eye with abrasion of lower left eye lid of 2 x 0.5 cms. and around eye of 6 x 6 cms. of left eye;

6. Irregular laceration of 3 x 1.5 cms. into nasal bone deep over bridge of bone;

7. Laceration of 0.5 x 0.5 cms. with abrasion of 1.5 x 1.5 cms. fresh over muscular surface of mid lower rib;

8. Abrasion fresh reddish over face 4 cms in front of right traques of the ear;

9. Abrasion of fresh and reddish over upper aspect of right shoulder;

10. Rail road threaten bruise of 30 cms. x 8 milimetres over upper both sides back of chest and shoulders;

11. Rail route pattern bruise of 29 cms. x 8 milimetres over both sides chest and shoulder 6 cms. below injury no.10;

12. Abrasion fresh and reddish 4 x 3 cms. on left side medial back of middle chest 1.5 cms. below injury no.11;

13. Abrasion fresh and reddish of 3 x 2 cms. over medial aspect of left knee, and

14. Multiple ant bites with irregular margins with no signs of vital reactions of middle fore arm.

4. Injury Nos.1 to 13, according to P.W.6, Dr. E. J. Rodrigues, were caused by hard and blunt object and were ante-mortem in nature. Whereas Injury No.14, which was caused by ant bite was a post mortem injury. On internal examination, he found the following:-

> "There was extra vassation of blood under injuries no.1, 2 and

> 3. There was depressed fracture of 10 x 2 cms. in occipital bone with fracture lines extending in right posterior cranial fosse into foramin magnum and also on right side mastoid and temporal bone as shown in diagram. The fracture line extends in the base of skull in the mid line in anterior cranial fosse, middle cranial fosse to right side posterior fosse as shown in diagram. There is also fracture of basal posterior cranial bones into two with mid line fracture of 12 x 5 cms. Thin haemorrhage present in both frontal lobes more so in right side. Sub haemorrhage present all over the brain. Contusion of left parietal, occipital lobes. Pin point haemorrhage present in the white matter of brain in the posterior half(parietal and occipital lobes). Brain was edematoes. Pin point haemorrhage present in the mid brain. The lungs, liver, spleen and the kidneys were all congested".

5. According to him, death was due to the head injury as a result of blunt force impact by hard and blunt object which was necessarily fatal vide Injury Nos.1 to 3. The Post Mortem Report is at Exh.27. He has opined that Injury Nos.1, 2 and 3 could be caused by an iron rod(M.O.13) as also Injury Nos.10 and 11. In respect of the other injuries, according to him, the same could be caused by a wooden stick(M.O.12).

6. The Accused were also examined by P.W.6, Dr. E. J. Rodrigues. He examined Accused No.1, Bostiao Seby Rodrigues. There were no injuries on the person of Accused No.1, Bostiao Seby Rodrigues. The report of

examination of Accused No.1, Bostiao Seby Rodrigues, is at Exh.28. He also examined Accused No.2, Monty Rodrigues and found that there was an abrasion with reddish brown scab of 3 x 1.5 cms. on lower right side of neck with tenderness. It was caused by blunt force and was of one to two days duration at the time of examination. According to P.W.6, Dr. E. J. Rodrigues, the injury could have been caused as a result of scuffle. The certificate of examination of Accused No.2, Monty Rodrigues, is at Exh.29. P.W.6, Dr. E. J. Rodrigues, also examined Accused No.3, Rosario Rodrigues, but did not notice any injuries on his person. The certificate of examination of Accused No.3, Rosario Rodrigues, is at Exh.30.

7. On 13th September, 2000, at the instance of Accused No.1, Bostiao Seby Rodrigues, an iron rod came to be attached from a hut near his residential house, vide panchanama Exh.19 which was drawn in the presence of P.W.3, Celestina Rodrigues. The said iron rod recovered at the instance of Accused No.1, Bostiao Seby Rodrigues, is M.O.5. On the same day, the statement of P.W.7, Michael A. Rodrigues, who had been injured in the incident, came to be recorded. On 21st September, 2000, an iron rod at the instance of Accused No.2, Monty Rodrigues, came to be attached from his house at Terekhol in the presence of P.W.9, Joseph Rodrigues, vide Exh.35.

After completion of the investigation a charge-sheet against the Appellants came to be filed.

8. On committal of the case to the Court of Sessions, charge vide Exh.4 was framed against the Appellants for offences punishable under Sections 302, 325 and 452 r/w 34 of the Indian Penal Code. The Appellants denied their guilt and claimed to be tried. The prosecution in support of its case examined 10 witnesses. The learned Sessions Judge, North Goa, Panaji, accepting the prosecution found the Appellants guilty for the aforesaid offences and sentenced them as aforestated.

9. The pivot of the prosecution case is the testimony of P.W.2, Pratibha Rodrigues, wife of Jose Rodrigues and P.W.7, Michael A. Rodrigues(brother of deceased). P.W.2, Pratibha Rodrigues, in her evidence states that she was residing at Mumbai with her husband deceased Jose Rodrigues for about 16 years. She has a sister-in-law by name Lucy Rodrigues who was residing at Terekhol. The incident took place in the house of Lucy Rodrigues. She further states that she and her husband had come to Goa and were staying in the house of Lucy Rodrigues since about two months prior to the incident. According to her, her brother-in-law, P.W.7, Michael A. Rodrigues, was also residing at Bandra, Mumbai, and had

come to Goa on the date of the incident i.e. on 10th September, 2000, and was residing with them in the house of Lucy Rodrigues. On 10th September, 2000, at about 9.30 p.m., she, her husband and P.W.7, Michael A. Rodrigues were sitting in the hall of the house and were talking to each other. Thereafter, at about 9.45 p.m. she went in the kitchen to prepare food. She heard some noise and on hearing the noise, she came out from the kitchen room to the hall and saw Accused No.1, Bostiao Seby Rodrigues and Accused No.2, Monty Rodrigues armed with iron rods in their hands and Accused No.3, Rosario Rodrigues, armed with a stick(danda) in his hand. All the three Accused were "assaulting" deceased Jose Rodrigues on head, face and back. Deceased Jose Rodrigues and P.W.7, Michael A. Rodrigues, were shouting as to why they were being assaulted. According to P.W.2, Pratibha Rodrigues, she also intervened and begged the Accused not to assault her husband. Accused No.1, Bostiao Seby Rodrigues, pushed her aside and threatened to assault her in case she intervened. Accused No.2, Monty Rodrigues and Accused No.3, Rosario Rodrigues then dragged her husband(deceased) out of the house in the direction of the house of the Accused. Accused No.1, Bostiao Seby Rodrigues, followed the other two Accused. After about 5 minutes or so, all the three Accused came back to their house similarly armed as before and started assaulting P.W.7, Michael A. Rodrigues, inside the house

with the weapons in their hands on his head, back and legs. Due to the injuries, P.W.7, Michael A. Rodrigues, fell down and became unconscious. After assaulting P.W.7, Michael A. Rodrigues, all the three Accused went out of her house and she followed them in search of her husband. She noticed that her husband had fallen in the courtyard of the Accused and saw all the Accused assaulting her husband. Accused No.3, Rosario Rodrigues, was giving kicks to her husband. Her husband had sustained several injuries on his body and was lying unconscious in a pool of blood. Many persons had gathered at the place where her deceased husband was lying. The people gathered at the scene of the offence brought the Member of the Village Panchayat by name Diogo Rodrigues and she narrated the entire incident to the said Diogo Rodrigues who told her that he would report the matter to the Police. The Police arrived at the scene of the offence past midnight. According to her, when the Police arrived, her husband was still lying in the courtyard of the Accused. According to her, the Police were brought to her house by the said Diogo Rodrigues. According to her, the Police had taken P.W.7, Michael A. Rodrigues, along with her in a jeep and P.W.7, Michael A. Rodrigues, was sent to Public Health Centre for examination and treatment. Before that, at about 11.00 p.m. on the day of the incident, she had learnt that her husband was dead. On the next day, she

had filed her complaint at Exh.16 to the Police. She has identified the weapons in the hands of Accused. According to her, the motive for the alleged assault was the fact that they were residing in the house of Lucy Rodrigues.

10. In the cross-examination, she has admitted that the house of the Accused is behind the house of Lucy Rodrigues. She has also admitted that the relations with the villagers were good so also the relations with the Accused. There were no quarrels between her husband and the Accused. Her family and the family of the Accused were not in visiting terms with each other. According to her, there were blood stains on the floor of the house and some blood stains were also seen on the walls of the house. According to her, from her house, the Police had attached only a stick in the morning. She has admitted that nobody interfered while the Accused were assaulting her husband because the Accused gave threats to the people. She denied the suggestion that her husband was assaulted by some villagers and fell in the courtyard of the Accused. She also denied the suggestion that the Accused were not the authors. According to her, the incident of assault lasted for 30 minutes or so.

11. P.W.7, Michael A. Rodrigues, is an injured witness, who states that his younger brother Jose

Rodrigues was married to P.W.2, Pratibha Rodrigues. On 9th September, 2000, he had left Bombay and had reached Goa on the next day i.e. 10th September, 2000, at about 9.30 a.m. and reached Terekhol at about 11.30 a.m. or 12.00 noon. At that time, deceased Jose Rodrigues and his wife P.W.2, Pratibha Rodrigues were present. At about 9.00 p.m. on 10th September, 2000, he along with his brother deceased Jose Rodrigues and P.W.2, Pratibha Rodrigues were sitting in the dining hall talking to each other. At about 9.30 p.m., P.W.2, Pratibha Rodrigues, went in the kitchen to prepare food. At about 9.45 p.m., all the three Accused entered the house. Accused No.1, Bostiao Seby Rodrigues and Accused No.2, Monty Rodrigues were armed with iron rods and Accused No.3, Rosario Rodrigues was having a stick(danda) in his hand. All the three Accused started abusing deceased Jose Rodrigues. The Accused also stated that deceased Jose Rodrigues was "Dada of Bombay". The Accused also asked him as to why he was coming to Goa. The Accused then threatened Jose Rodrigues by saying "they would kill him". Deceased Jose Rodrigues replied to the Accused stating as to what wrong they had done and P.W.7, Michael A. Rodrigues told the Accused that they had not come to stay in Goa but would be leaving Goa within 3 to 4 days. All the three Accused started "assaulting" deceased Jose Rodrigues with the weapons in their hands. On hearing the shouts of deceased Jose Rodrigues, P.W.2, Pratibha Rodrigues, came

in the dining hall and P.W.2, Pratibha Rodrigues, also pleaded with the Accused not to assault her husband. Accused No.1, Bostiao Seby Rodrigues, pushed P.W.2, Pratibha Rodrigues and threatened her that in case she interfered she also would be assaulted. P.W.7, Michael A. Rodrigues also pleaded with the Accused not to hurt his brother deceased Jose Rodrigues but the Accused also threatened him. Seeing the assault on his brother deceased Jose Rodrigues, P.W.7, Michael A. Rodrigues, hid himself underneath the table. After dragging the deceased Jose Rodrigues out of the house, the three Accused came inside the house similarly armed as before and asked P.W.2, Pratibha Rodrigues, as to where P.W.7, Michael A. Rodrigues, was hiding. Accused No.1, Bostiao Seby Rodrigues, noticed P.W.7, Michael A. Rodrigues hiding and assaulted him with an iron rod on his right leg. Thereafter, all the three Accused dragged him out of the house and started assaulting him. He was assaulted on the entire part of his body and sustained injury on his right leg and injury on his head. The Accused again pushed P.W.2, Pratibha Rodrigues. According to P.W.7, Michael A. Rodrigues, as a result of the injuries, he fell on the ground and became unconscious. He regained consciousness at about 11.30 p.m. and after about 5 minutes, P.W.2, Pratibha Rodrigues, came into the house and told her that her husband was thrown on the ground after beating him. In

the meantime, one Diogo came and told him that he had informed the Police. The Police arrived around 12 midnight and wanted to record his statement but he was not in a fit state of mind to give his statement. He was taken to the Primary Health Centre and thereafter to the Goa Medical College and discharged on 14th September, 2000. In the cross-examination, he was asked the question whether he could identify the Accused to which he answered in the affirmative and had identified the Accused. He has admitted that he was visiting Goa for the last 10 years and would stay in Goa for 15 days or so in the house of Lucy Rodrigues at Terekhol. He admitted that he does not visit the house of the Accused nor do the Accused visit his house. He has admitted that he was not in enemical terms with the Accused and prior to the incident, the Accused had not caused any trouble to him. He has also admitted in the cross-examination that the house of Lucy Rodrigues consists of four rooms. Blood stains were noticed on the floor and also on the walls of the house. He has further admitted in the cross-examination "nobody from the ward came to our rescue when the Accused were assaulting us. I say that the people from the village are afraid of the Accused and I think because of that reason nobody came to our house. I say that the people are afraid of the Accused because there is unity among them". He has denied the suggestion that at the time of the incident, he and deceased Jose

Rodrigues had consumed liquor and the public and villagers had assaulted them on that account. He has also denied the suggestion that when they were returning to their house, deceased Jose fell in the courtyard of the house of the Accused. He has also denied the suggestion that the Accused did not enter their house and did not cause any injury.

12. P.W.8, Shivanand Bandekar, is the Assistant Professor in the Orthopaedic Department of the Goa Medical College. On 11th September, 2000, he had examined P.W.7, Michael A. Rodrigues, and had found the following external injuries:-

1. Closed fracture right fibula without neuro vascular deficit.
2. Soft tissue injury to right and left forearm.

13. An operation of fixation of fibula was carried out as an emergent procedure under spinal anaesthesia. The certificate is at Exh.33. In the cross-examination, he has admitted that the patient was referred to him by the Casualty Department and he did not have history of the patient. According to him, it was a case of assault. History was given by the patient himself.

14. P.W.3, Celestina Rodrigues, sister of the

deceased states that the Accused No.1, Bostiao Seby Rodrigues, had made a statement that she would show the iron rod which he had kept in the hut. Thereafter, the Police and the panch witnesses along with the Accused proceeded to their place as per the directions of Accused No.1, Bostiao Seby Rodrigues. The Accused produced the iron rod which was seized by the Police. The panchanama Exh.19 to that effect was drawn. In the panchanama at Exh.19, there is no recital that Accused No.1, Bostiao Seby Rodrigues, had made such a statement. The recital in the panchanama is that P.W.10, P.S.I. Uday Parab had briefed that he would point out the iron rod. P.W.9, Joseph Rodrigues, brother-in-law of deceased Jose Rodrigues, states that on 21st September, 2000, Accused No.2, Monty Rodrigues, had disclosed in his presence that he would point out the place where he had kept the iron rod. Accused No.2, Monty Rodrigues, along with the Police and the panchas had gone to his house and had produced an iron rod kept below the cot. He has stated that the family of the Accused were harassing him as they were interested in grabbing his property. The Accused had constructed a bathroom and had allowed the drainage water to pass through his property. According to him, on account of his house, the family of the Accused was in enemical terms towards them. The panchanama at Exh.35 in respect of the seizure of the iron rod does not refer to

any statement being made by Accused No.2, Monty Rodrigues.

15. Mr. Shekhar Ingawale, learned Counsel appearing on behalf of the Appellants has urged before us that the evidence of P.W.2, Pratibha Rodrigues and P.W.7, Michael A. Rodrigues, is extremely artificial. According to him, the evidence of P.W.2. Pratibha Rodrigues, cannot be accepted as the conduct of P.W.2, Pratibha Rodrigues, belies her statement that she had witnessed the incident. According to him, no efforts were made by P.W.2, Pratibha Rodrigues, to give medical aid to her husband who was lying in the courtyard of the Accused. It is next urged that P.W.2, Pratibha Rodrigues, had stated that P.W.7, Michael A. Rodrigues, was assaulted on his head, back and legs. However, as per the certificate at Exh.33, P.W.7, Michael A. Rodrigues, had only received injuries on his arms and legs. Thus, it is urged before us that the version of P.W.2, Pratibha Rodrigues, is thus falsified. In respect of P.W.7, Michael A. Rodrigues, it is urged before us that there was delay in recording his statement and no plausible explanation is given for delay in recording his statement. It is also urged before us that curiously the prosecution did not record the statement of Diogo Rodrigues, though a material witness. According to the learned Counsel appearing on behalf of the Appellants,

the conviction rests solely on the testimony of related witnesses and though independent witnesses were available, the prosecution chose not to examine the witnesses. It is also urged before us that the evidence of seizure of iron rods at the instance of the Appellants is vitiated for the various infirmities which are pointed out. It is faintly urged before us that though a panchanama of the house of the Accused was drawn, P.W.1, Carridade B. Dias, does not refer to the taking of blood samples from the house of P.W.2, Pratibha Rodrigues, rendering the version of P.W.2, Pratibha Rodrigues doubtful.

16. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State has supported the Judgment of the learned Trial Court and has submitted before us that there was overwhelming evidence of P.W.2, Pratibha Rodrigues and P.W.7, Michael A. Rodrigues, and minor infirmities in the investigation would be no ground to jettison the evidence of these two eye witnesses. According to the learned Public Prosecutor appearing on behalf of the State, there is intrinsic material to show that the independent witnesses were not willing to come forward and depose and thus, the evidence of P.W.2, Pratibha Rodrigues and P.W.7, Michael A. Rodrigues can safely be accepted to sustain the conviction.

17. The evidence of P.W.2, Pratibha Rodrigues, is assailed on the ground that P.W.2, Pratibha Rodrigues, knowing that her husband was lying unconscious in the courtyard of the Accused, did not take any steps for providing medical aid to him. It is true that P.W.2, Pratibha Rodrigues, in her evidence states that her husband was lying unconscious in the courtyard of the Accused. She maintains that her husband was lying unconscious and at that very place till the arrival of the Police. However, in her examination-in-chief, P.W.2, Pratibha Rodrigues, has stated "at about 11.00 p.m. on the day of the incident I came to know that my husband was dead". P.W.10, P.S.I. Uday Parab, has admitted in the cross-examination that he found the deceased Jose Rodrigues was already dead and it was not possible to shift the dead body during the night due to poor visibility on the spot. Evidence of P.W.2, Pratibha Rodrigues, is further assailed on the ground that she has stated that P.W.7, Michael A. Rodrigues, was assaulted on his head, back and legs and this statement of P.W.2, Pratibha Rodrigues, according to the learned Counsel appearing on behalf of the Appellants, is falsified by the certificate at Exh.33 which shows that P.W.7, Michael A. Rodrigues, had received injuries on his arms and legs only. Perusal of Exh.33, certificate in respect of examination of P.W.7, Michael A. Rodrigues does reveal

that P.W.7, Michael A. Rodrigues, had not sustained any injury on his head. However, according to us, that is not a ground for rejecting the evidence of P.W.2, Pratibha Rodrigues, as this slight variance does not at all discredit the testimony of P.W.2, Pratibha Rodrigues. Deceased Jose Rodrigues was initially beaten in the presence of P.W.2, Pratibha Rodrigues, and thereafter, all the three Appellants are alleged to have beaten P.W.7, Michael A. Rodrigues, also in the presence of P.W.2, Pratibha Rodrigues. Witnesses are not expected to give graphic details of the exact place of the body of the victim where the injuries are inflicted. Minor exaggerations, not touching the core of the evidence of the witness would not be a ground to reject and otherwise reliable testimony. Therefore, according to us, the fact that no injuries were found on the head of P.W.7, Michael A. Rodrigues, would not be a ground to throw overboard the otherwise reliable evidence of P.W.2, Pratibha Rodrigues. The evidence of P.W.2, Pratibha Rodrigues, does not suffer from any infirmity on material aspects to render her evidence unacceptable. The evidence of P.W.2, Pratibha Rodrigues, also is not shown to be improbable so as to doubt her credibility. According to us, therefore, the learned Trial Court was right in placing reliance on the evidence of P.W.2, Pratibha Rodrigues.

18. In respect of P.W.7, Michael A. Rodrigues, it

is urged before us that there is delay in recording of his statement. According to P.W.10, P.S.I. Uday Parab, the statement of P.W.7, Michael A. Rodrigues, was recorded on 13th September, 2000. P.W.7, Michael A. Rodrigues, states that the Police had come around 12 midnight and they wanted to record his statement but he was not in a state of mind to give his statement. P.W.10, P.S.I. Uday Parab, has stated that the statement of P.W.7, Michael A. Rodrigues, was recorded on 13th September, 2000, when he was undergoing treatment at the Goa Medical College, Bambolim. P.W.8, Dr. Shivanand Bandekar, has stated that an operation had been performed as an emergency procedure on 11th September, 2000, in respect of the fracture suffered by P.W.7, Michael A. Rodrigues. The report of P.W.2, Pratibha Rodrigues, at Exh.16 had already been lodged with the Police on 11th September, 2000, and her evidence is corroborated by the contents of the report in respect of the assault on P.W.7, Michael A. Fernandes by the Appellants. In such circumstances, delay simpliciter as a ground is not available to the Appellants to discredit the version of P.W.7, Michael A. Fernandes. Even otherwise, according to us, P.W.10, P.S.I. Uday Parab, has given an explanation for the delay in the recording of the statement of P.W.7, Michael A. Fernandes.

19. Mr. Shekhar Ingawale, learned Counsel

appearing on behalf of the Appellants has placed reliance on a Judgment of the Apex Court in **Ganesh Bhavan Patel and another** v. **State of Maharashtra** reported in AIR 1979 SC 135 particularly on the observations of the Apex Court in paragraphs 15 and 29 which read as under:-

> "15. As noted by the Trial Court, one unusual feature which projects its shadow on the evidence of P.Ws. Welji, Pramila and Kuwarbai and casts a serious doubt about their being eye-witnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence, or soon thereafter, their statements under S.161 Cr.P.C. were recorded on the following day. Welji (P.W.3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m. and Kuvarbai at 1 p.m. Delay of a few hours, simplicites, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witness to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case".
>
> "29. Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the 'F.I.R.' and

> further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story".

20. In our considered opinion, in the present case, there is nothing in the cross-examination of P.W.10, P.S.I. Uday Parab, to suggest that he had deliberately deferred the recording of the statement of P.W.7, Michael A. Rodrigues, as he was marking time with a view to decide about the shape to be given to the case and the eye witnesses to be introduced. In the present case, the report at Exh.17 had been lodged by P.W.2, Pratibha Rodrigues, which clearly stated about the assault on her deceased husband as well as the assault on P.W.7, Michael A. Rodrigues. Therefore, in our considered opinion, the delay in recording the statement of P.W.7, Michael A. Rodrigues, would neither adversely affect the prosecution nor would the evidence of P.W.7, Michael A. Rodrigues stand discredited on that count.

21. We have in detail adverted to the evidence of P.W.7, Michael A. Rodrigues and according to us, the evidence of P.W.7, Michael A. Rodrigues and the evidence of P.W.2, Pratibha Rodrigues, which is corroborated by the F.I.R. Exh.16, proves beyond doubt the commission of the offence by the Appellants. It was faintly urged before us that the prosecution has examined only related witnesses while the prosecution has chosen not to examine

independent witnesses though available.

22. A reference may usefully be made to the observations of the Apex Court in **Appabhai and another** v. **State of Gujarat** reported in AIR 1988 SC 696 where the Apex Court has observed thus:-

> "It is no doubt true that the prosecution has not been able to produce any independent witness to the murder that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of a pathy of the general public is indeed unfortunate, but, it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum or the prosecution version and then serch for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner.

> Nor do they react uniformly. The horror stricken witness at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner".

23. Apart from that, P.W.7, Michael A. Rodrigues, is an injured witness and there is nothing in his cross-examination to discredit his statement regarding the infliction of the injuries by the Appellants. It is also urged before us that the prosecution had not recorded the statement of Diogo Rodrigues to whom P.W.2, Pratibha Rodrigues, is alleged to have immediately informed about the incident and though, Diago Rodrigues was cited as a prosecution witness he has not been examined. Merely because the Investigating Officer has committed an irregularity or has omitted to record the statement of Diogo Rodrigues, that would not lead to an inference that what P.W.2, Pratibha Rodrigues, stated is false. Admittedly, the Police were informed by Diogo Rodrigues that a person in a seriously injured condition was lying in the courtyard of the Accused. The Police reached the scene of the offence on the basis of the said information. The Investigating Officer ought to have recorded the statement of Diogo Rodrigues. However, non recording of the statement of Diogo Rodrigues in our considered opinion would not affect the veracity of

P.W.2, Pratibha Rodrigues. The recording of the statement of Diogo Rodrigues would at the most afford corroboration to the testimony of P.W.2, Pratibha Rodrigues, which even otherwise, according to us, stands corroborated.

24. It was urged before us that the claim of the prosecution that deceased Jose Rodrigues and P.W.7, Michael A. Rodrigues were assaulted in the house is not corroborated by the evidence of P.W.1, Carridade B. Dias. Though, the scene of offence panchanama at Exh.9 refers to not only the courtyard of the Appellants/Accused but also refers to the house of the deceased as the place of incident, P.W.1, Carridade B. Dias has not referred to the Police inspecting the house of the deceased in his presence. However, in the cross-examination of P.W.10, P.S.I. Uday Parab, it has been brought out that he had visited the house of the deceased and this is what he states:-

> "Immediately after midnight after the occurrence of the incident I visited the house of the Complainant. At the time when I visited the house of the Complainant the injured Michael Rodrigues, the wife of the deceased, the said Diogo Rodrigues and my staff members were present. Inside the house I saw some blood on the floor of the house. Some furniture in the house was found in disorderly manner".

25. Thus, the evidence on record does suggest that the deceased and P.W.7, Michael A. Rodrigues, were initially assaulted in the house and it is not as if P.W.2, Pratibha Rodrigues and P.W.7, Michael A. Rodrigues, have introduced the story of assault in the house in their evidence for the first time.

26. It was next urged before us that the evidence in respect of the discovery of the two iron rods at the instance of Accused Nos.1 and 2, Bostiao Seby Rodrigues and Monty Rodrigues, cannot be believed. P.W.3, Celestina Rodrigues, is a witness. At Exh.19, the panchanama in respect of seizure of the rod at the instance of Accused No.1, Bostiao Seby Rodrigues, and at Exh.35 seizure of the rod at the instance of Accused No.2, Monty Rodrigues. However, P.W.3, Celestina Rodrigues refers only to Exh.19 i.e. seizure of the iron rod at the instance of Accused No.1, Bostiao Seby Rodrigues and does not speak anything about the seizure of the rod at the instance of Accused No.2, Monty Rodrigues. Similar is the evidence of P.W.9, Joseph Rodrigues, who only refers to the seizure of rod at the instance of Accused No.2, Monty Rodrigues, but does not refer to the seizure of the rod at the instance of Accused No.1, Bostiao Seby Rodrigues, though, he was a witness to that panchanama also. It is further urged before us that the panchanamas at Exhs.19 and 35 do not contain any statement being made by the Accused showing

their willingness to point out the place where the iron rods were hidden. P.W.10, P.S.I. Uday Parab, also does not refer to the actual statement made by the Accused which led to the discovery of the iron rods. According to us, in view of the infirmities, it is unsafe to accept the evidence of the panch witnesses and the Investigating Officer in respect of the discovery of the iron rods. However, since there is other overwhelming evidence against the Accused, the rejection of the discovery does not assist the case of the Accused any further.

27. We have given our anxious consideration to the evidence on record and according to us, the evidence of P.W.2, Pratibha Rodrigues, corroborated by the F.I.R. at Exh.16 and the evidence of P.W.7, Michael A. Rodrigues, proves beyond reasonable doubt that the Accused had inflicted injuries to deceased Jose Rodrigues and P.W.7, Michael A. Rodrigues. We do not see any merit in this Appeal which is accordingly dismissed.

28. In the result, therefore, Criminal Appeal No. 36 of 2002 is dismissed.

P. V. HARDAS, J. A. M. KHANWILKAR, J.

RD.